

SOUTHERN UTAH WILDERNESS ALLIANCE

IBLA 94-32

Decided November 6, 1996

Appeal from a decision of the Grand (Utah) Resource Area Manager, Bureau of Land Management, authorizing travel by helicopter within wilderness study areas. UT-068-93-118.

Appeal dismissed.

1. Administrative Procedure: Administrative Review--
Appeals: Generally--Federal Land Policy and
Management Act of 1976: Generally--Federal Land Policy
and Management Act of 1976: Wilderness--Rules of
Practice: Appeals: Dismissal--Rules of Practice:
Appeals: Jurisdiction

After all helicopter travel within five wilderness study areas authorized by a BLM decision was completed, an appeal from the decision may be properly dismissed as moot.

APPEARANCES: Scott Groene, Esq., Salt Lake City, Utah, for Southern Utah Wilderness Alliance.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Southern Utah Wilderness Alliance (SUWA) has appealed a July 23, 1993, decision record and finding of no significant impact of the Grand (Utah) Resource Area Manager, Bureau of Land Management (BLM), authorizing the United States Forest Service (Forest Service) to use helicopters for travel to 34 locations within five Wilderness Study Areas (WSA's) to assess forest and woodland resources.

BLM's decision was based on environmental assessment (EA) UT-068-93-118. The EA was prepared in response to a July 20, 1993, request by the Forest Service for authorization to use helicopters to conduct a forest land inventory pursuant to Interagency Agreement INT-90525-1A between the BLM Utah State Office and the Intermountain Research Station of the Forest Service. The Forest Service stated that helicopters were needed to inventory 45 field locations in Grand, Emery, and Carbon counties, and that 34 of those locations were within five WSA's (Desolation Canyon, Flume Canyon, Coal Canyon, Floy Canyon, and Side Mountain). The authorization request explained that for 1 week between July 26, 1993, and August 20, 1993, a

helicopter would transport field crews to and from these locations where the crews would conduct a resource inventory.

On July 21, 1993, notice of the EA was given on BLM's electronic notice board. On July 23, 1993, BLM posted a notice on the board that the decision record had been signed and the proposed action approved. The EA identified major uses in the areas of the proposed inventory sites and recognized that during the week of the inventory the solitude of the WSA could be impacted, but found that after the inventory the opportunities for primitive and unconfined recreation would return and there would be no appreciable impact to the area's wilderness characteristics or aggregate effect on wilderness values (EA Appendix 1). The Area Manager approved the decision record on July 23, 1993, finding that the proposed action, with certain specified mitigation measures, would not have any significant impacts on the human environment. An August 4, 1993, letter from BLM to the Intermountain Research Station authorized helicopter access but stated work could not begin before August 21, 1993, to allow for a 30-day notification period required by the Interim Management Policy and Guidelines for Lands under Wilderness Review (IMP). 44 FR 72014 (Dec. 12, 1979), as amended, 48 FR 31854 (July 12, 1983). SUWA appealed the decision to allow helicopter access, but did not seek a stay of the BLM decision. SUWA argues that since these are long term studies, and because the decision approved helicopter access in the future, this appeal frames a controversy that remains to be decided.

[1] SUWA's appeal rests on an assumption that the 1993 BLM decision approved helicopter access in the future; the letter of authorization dated August 4, 1993, however, was not a blanket authorization. The Forest Service request was specific to 1993; the EA considered only a 1-week period between July 26 and August 20 of that year. While the EA did not specifically so state, in the context of the specific dates provided therein, the EA can apply to no year except 1993. Further tying the BLM decision under review to the summer of 1993, the August 4, 1993, letter of authorization identified August 21 as the earliest starting date for the inventory and identified mitigation measures for specific locations during that timeframe, including notifying local flying services of the helicopter flights and a declared need to avoid sampling during the 1993 hunting season. While it also warned that future access might be limited to nonmotorized means if the areas were designated as wilderness, the letter did not extend a future authorization for helicopter use in the WSA's; it approved only one use and that use was completed in 1993. Consequently, reversal of the decision under appeal would provide no relief, and any such action by the Board would be futile. Utah Wilderness Association, 91 IBLA 124, 130 (1986). The EA states there are plans to reinventory on a 10-year schedule (EA at 1), so presumably the Forest Service will be returning to these locations in 2003. If any or all of these locations are still within WSA's, and if the Forest Service desires to use helicopters again, BLM will need to revisit the subject of the use of helicopters to deal with any changed circumstances and the question may be reviewed then.

SUWA also argues that the BLM decision violated the IMP by failing to give the public a required 30-day notice before approving helicopter work within the WSA's. The EA stated that inventory work would begin during the week of July 26, 1993, although BLM later notified the Forest Service to wait until August 21 to allow the IMP's 30-day notification period to run.

SUWA contends the date appearing in the EA made the decision final without providing an opportunity for public comment. It is claimed that BLM violated the IMP by failing to provide enough time for comment before the decision became final.

Ordinarily, an appeal will be dismissed as moot if there is no effective relief the Board can give an appellant because the action appealed from has been completed. See, e.g., Utah Wilderness Association, supra. The Board will, however, decline to dismiss an appeal on the basis of mootness if the issues raised are capable of repetition, yet evading review. See Predator Project, 127 IBLA 50 (1993); Headwaters, Inc., 116 IBLA 129 (1990). Nonetheless, the fact that an issue which is otherwise moot may recur does not preclude dismissal if future actions will be subject to review. See In Re Jamison Cove Fire Salvage Timber Sale, 114 IBLA 51, 53 (1990).

This case does not present a situation where dismissing the appeal as moot would avoid review of a recurring issue. If another situation arises where SUWA objects to the notice given of a particular action by BLM, SUWA may appeal the decision and request a stay. Under 43 CFR 4.21 a decision is not effective until the time for appeal has run; during that time a person challenging a decision may request a stay; if the standards for a stay are met, one will be granted. SUWA's notice of appeal was dated August 17, 1993, before the date the Forest Service was authorized to begin the inventory. SUWA could have sought a stay then, but chose not to do so.

Therefore, even if the notice issue raised by SUWA could be considered to be one that may recur, it is clearly not evasive of review in a future case. The appeal herein is properly dismissed as moot.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Burski
Administrative Judge